

**ASSEMBLY BILL**

**No. 1619**

**Introduced by Assembly Member Jackson**

February 21, 2003

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An act to amend Section 20636 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1619, as introduced, Jackson. Public employees' retirement: compensation.

The Public Employees' Retirement Law requires contributions to the retirement fund based on compensation earnable by a member, which includes the member's payrate and special compensation, as specified. Under existing law, the Department of Personnel Administration has the discretion to determine which payments and allowances that are paid by the state employer are considered compensation for retirement purposes for certain employees who are excluded from the definition of state employee or are nonelected officers or employees of the executive branch, as specified.

This bill would delete the above provision. The bill would instead provide that those excluded employees or nonelected officers or employees of the executive branch shall have a specified definition of compensation earnable considered compensation for retirement purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 20636 of the Government Code is amended to read:

20636. (a) “Compensation earnable” by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) “Payrate” means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. “Payrate,” for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) “Payrate” shall include any amount deducted from a member’s salary for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(D) Participation in a flexible benefits program.

(3) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(4) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special

1 compensation shall be limited to that which the board determines  
2 is received by similarly situated members in the closest related  
3 group or class that is in addition to payrate, subject to the  
4 limitations of paragraph (2) of subdivision (e).

5 (3) Special compensation shall be for services rendered during  
6 normal working hours and, when reported to the board, the  
7 employer shall identify the pay period in which the special  
8 compensation was earned.

9 (4) Special compensation may include the full monetary value  
10 of normal contributions paid to the board by the employer, on  
11 behalf of the member and pursuant to Section 20691, if the  
12 employer's labor policy or agreement specifically provides for the  
13 inclusion of the normal contribution payment in compensation  
14 earnable.

15 (5) The monetary value of any service or noncash advantage  
16 furnished by the employer to the member, except as expressly and  
17 specifically provided in this part, is not special compensation  
18 unless regulations promulgated by the board specifically  
19 determine that value to be "special compensation."

20 (6) The board shall promulgate regulations that delineate more  
21 specifically and exclusively what constitutes "special  
22 compensation" as used in this section. A uniform allowance, the  
23 monetary value of employer-provided uniforms, holiday pay, and  
24 premium pay for hours worked within the normally scheduled or  
25 regular working hours that are in excess of the statutory maximum  
26 workweek or work period applicable to the employee under  
27 Section 201 et seq. of Title 29 of the United States Code shall be  
28 included as special compensation and appropriately defined in  
29 those regulations.

30 (7) Special compensation does not include any of the  
31 following:

32 (A) Final settlement pay.

33 (B) Payments made for additional services rendered outside of  
34 normal working hours, whether paid in lump sum or otherwise.

35 (C) Any other payments the board has not affirmatively  
36 determined to be special compensation.

37 (d) Notwithstanding any other provision of law, payrate and  
38 special compensation schedules, ordinances, or similar documents  
39 shall be public records available for public scrutiny.

(e) (1) As used in this part, “group or class of employment” means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, “final settlement pay” means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), “compensation earnable” for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), “payrate” for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member’s services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. “Payrate” for state members shall include:

1 (A) Any amount deducted from a member's salary for any of  
2 the following:

3 (i) Participation in a deferred compensation plan established  
4 pursuant to Chapter 4 (commencing with Section 19993) of Part  
5 2.6.

6 (ii) Payment for participation in a retirement plan that meets the  
7 requirements of Section 401(k) of Title 26 of the United States  
8 Code.

9 (iii) Payment into a money purchase pension plan and trust that  
10 meets the requirements of Section 401(a) of Title 26 of the United  
11 States Code.

12 (iv) Participation in a flexible benefits program.

13 (B) Any payment in cash by the member's employer to one  
14 other than an employee for the purpose of purchasing an annuity  
15 contract for a member under an annuity plan that meets the  
16 requirements of Section 403(b) of Title 26 of the United States  
17 Code.

18 (C) Employer "pick up" of member contributions that meets  
19 the requirements of Section 414(h)(2) of Title 26 of the United  
20 States Code.

21 (D) Any disability or workers' compensation payments to  
22 safety members in accordance with Section 4800 of the Labor  
23 Code.

24 (E) Temporary industrial disability payments pursuant to  
25 Article 4 (commencing with Section 19869) of Chapter 2.5 of Part  
26 2.6.

27 (F) Any other payments the board may determine to be within  
28 "payrate."

29 (3) Notwithstanding subdivision (c), "special compensation"  
30 for state members shall mean all of the following:

31 (A) The monetary value, as determined by the board, of living  
32 quarters, board, lodging, fuel, laundry, and other advantages of  
33 any nature furnished to a member by his or her employer in  
34 payment for the member's services.

35 (B) Any compensation for performing normally required  
36 duties, such as holiday pay, bonuses (for duties performed on  
37 regular work shift), educational incentive pay, maintenance and  
38 noncash payments, out-of-class pay, marksmanship pay, hazard  
39 pay, motorcycle pay, paramedic pay, emergency medical  
40 technician pay, POST certificate pay, and split shift differential.

1 (C) Compensation for uniforms, except as provided in Section  
2 20632.

3 (D) Any other payments the board may determine to be within  
4 “special compensation.”

5 (4) Neither “payrate” nor “special compensation” for state  
6 members includes any of the following:

7 (A) The provision by the state employer of any medical or  
8 hospital service or care plan or insurance plan for its employees  
9 (other than the purchase of annuity contracts as described below  
10 in this subdivision), any contribution by the employer to meet the  
11 premium or charge for that plan, or any payment into a private fund  
12 to provide health and welfare benefits for employees.

13 (B) Any payment by the state employer of the employee  
14 portion of taxes imposed by the Federal Insurance Contribution  
15 Act.

16 (C) Amounts not available for payment of salaries and that are  
17 applied by the employer for the purchase of annuity contracts  
18 including those that meet the requirements of Section 403(b) of  
19 Title 26 of the United States Code.

20 (D) Any benefits paid pursuant to Article 5 (commencing with  
21 Section 19878) of Chapter 2.5 of Part 2.6.

22 (E) Employer payments that are to be credited as employee  
23 contributions for benefits provided by this system, or employer  
24 payments that are to be credited to employee accounts in deferred  
25 compensation plans. The amounts deducted from a member’s  
26 wages for participation in a deferred compensation plan may not  
27 be considered to be “employer payments.”

28 (F) Payments for unused vacation, annual leave, personal  
29 leave, sick leave, or compensating time off, whether paid in lump  
30 sum or otherwise.

31 (G) Final settlement pay.

32 (H) Payments for overtime, including pay in lieu of vacation or  
33 holiday.

34 (I) Compensation for additional services outside regular duties,  
35 such as standby pay, callback pay, court duty, allowance for  
36 automobiles, and bonuses for duties performed after the member’s  
37 regular work shift.

38 (J) Amounts not available for payment of salaries and which  
39 are applied by the employer for any of the following:

1 (i) The purchase of a retirement plan which meets the  
2 requirements of Section 401(k) of Title 26 of the United States  
3 Code.

4 (ii) Payment into a money purchase pension plan and trust  
5 which meets the requirements of Section 401(a) of Title 26 of the  
6 United States Code.

7 (K) Payments made by the employer to or on behalf of its  
8 employees who have elected to be covered by a flexible benefits  
9 program, where those payments reflect amounts that exceed the  
10 employee's salary.

11 (L) Any other payments the board may determine are not  
12 "payrate" or "special compensation."

13 (5) If the provisions of this subdivision, including the board's  
14 determinations pursuant to subparagraph (F) of paragraph (2) and  
15 subparagraph (D) of paragraph (3), are in conflict with the  
16 provisions of a memorandum of understanding reached pursuant  
17 to Section 3517.5 or 3560, the memorandum of understanding  
18 shall be controlling without further legislative action, except that  
19 if the provisions of a memorandum of understanding require the  
20 expenditure of funds, those provisions may not become effective  
21 unless approved by the Legislature in the annual Budget Act. No  
22 memorandum of understanding reached pursuant to Section  
23 3517.5 or 3560 may exclude from the definition of either  
24 "payrate" or "special compensation" a member's base salary  
25 payments or payments for time during which the member is  
26 excused from work because of holidays, sick leave, vacation,  
27 compensating time off, or leave of absence. If any items of  
28 compensation earnable are included by memorandum of  
29 understanding as "payrate" or "special compensation" for  
30 retirement purposes for represented and higher education  
31 employees pursuant to this paragraph, the Department of  
32 Personnel Administration or the Trustees of the California State  
33 University shall obtain approval from the board for that inclusion.

34 (6) (A) Subparagraph (B) of paragraph (3) of this subdivision  
35 prescribes that compensation earnable includes any compensation  
36 for performing normally required duties, such as holiday pay,  
37 bonuses (for duties performed on regular work shift), educational  
38 incentive pay, maintenance and noncash payments, out-of-class  
39 pay, marksmanship pay, hazard pay, motorcycle pay, paramedic  
40 pay, emergency medical technician pay, POST certificate pay, and

1 split shift differential; and includes compensation for uniforms,  
2 except as provided in Section 20632; and subparagraph (I) of  
3 paragraph (4) excludes from compensation earnable  
4 compensation for additional services outside regular duties, such  
5 as standby pay, callback pay, court duty, allowance for automobile,  
6 and bonuses for duties performed after regular work shift.

7 ~~(B) Notwithstanding subparagraph (A), the Department of~~  
8 ~~Personnel Administration shall determine which payments and~~  
9 ~~allowances that are paid by the state employer shall be considered~~  
10 ~~compensation for retirement purposes for any employee who~~  
11 ~~either is excluded from the definition of state employee in Section~~  
12 ~~3513, or is a nonelected officer or employee of the executive~~  
13 ~~branch of government who is not a member of the civil service.~~  
14 *Excluded employees, as defined in subdivision (b) of Section 3527*  
15 *or a nonelected officer or employee of the executive branch of*  
16 *government who is not a member of the civil service, shall have*  
17 *considered compensation for retirement purposes the*  
18 *compensation earnable listed in subparagraph (A).*

19 (C) Notwithstanding subparagraph (A), the Trustees of the  
20 California State University shall determine which payments and  
21 allowances that are paid by the trustees shall be considered  
22 compensation for retirement purposes for any managerial  
23 employee, as defined in Section 3562, or supervisory employee as  
24 defined in Section 3580.3.